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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 878

THE GENERAL TIRE & RUBBER COMPANY,
A BODY CORPORATE,
Petitioner,

v.

THE HONORABLE R. DORSEY WATKINS,
UNITED STATES DISTRICT JUDGE FOR THE
DISTRICT OF MARYLAND,
Respondent.

REPLY TO MEMORANDUM FOR THE UNITED STATES

NORMAN P. RAMSEY,
Suite 1750, 10 Light Street,
Baltimore, Maryland 21202,
Attorney for Petitioner.

CHARLES J. MERRIAM,
Of Counsel.

The Daily Record Co., Baltimore 3, Md.

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The United States says that the only connection of the Government with this suit is the fact that the claims of the private parties have their origins in Government contracts (Mem. p. 5). This is not correct.

The United States has a *present* and *continuing* interest with respect to this suit. The United States has expressly reserved the right to make *further* nominations with respect to Petitioner's research contracts. (Mandamus Respondent's App. Exhibit E, 7. Beale Affidavit, Exhibit "g").

The United States has *refused* to state that it will not make further nominations.

The claim that this is a private litigation is completely contrary to the *actions* of the United States in the past. In 1957 it sued *The B. F. Goodrich Company* for a declaratory judgment that the United States (and its nominees) were licensed to certain Goodrich inventions pursuant to research contracts of the *same general nature* as Petitioner's in this suit (Mandamus Respondent's App. Exhibit E. 7, Beale Affidavit, Exhibit "b"). Petitioner is fearful that the Government will do the very same thing after Petitioner wins in this case. The Government has refused to say that it will not do to Petitioner what it did to Goodrich.

The United States is correct when it claims that Petitioner hopes to avoid the burdens of several private suits (Mem. p. 5). Petitioner believes this fact clearly shows the merit of its request for joinder of the United States. The avoidance of a multiplicity of suits has always been considered a good purpose to be served by enlightened rules of civil procedure.

The joinder of the United States will permit Petitioner to strike at the source of the claims of license. It will stop all further threats on behalf of the United States that it has reserved the power to license Petitioner's patent. It will remove a cloud from Petitioner's patent and it will prevent the rise of future nominees claiming to be licensed through the United States.

Petitioner seeks to put an end to litigation. The United States wants to leave the matter unresolved subject to future litigation. The United States has two choices. It should state that it will make no future claim to license

of Petitioner's invention or it should join and litigate the matter.

Its refusal to make this reasonable choice has required Petitioner to bring a Motion for mandatory joinder under Rule 19(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

NORMAN P. RAMSEY,
Attorney for Petitioner.

CHARLES J. MERRIAM,
Of Counsel.

April, 1964.